

**THE CORPORATION OF THE TOWN OF AMHERSTBURG
BY-LAW NO. 2018-53**

**By-law to authorize the execution of a Development Agreement
between Diageo Canada Inc. and
the Corporation of the Town of Amherstburg
110 St. Arnaud Street, Amherstburg**

WHEREAS under Section 8 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS under Section 9. (1) (a) and (b) of the Municipal Act 2001, S.O., 2001, c. 25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

AND WHEREAS the Corporation of the Town of Amherstburg and the Owner have agreed to the site plan, site servicing and elevations in the Development Agreement;

AND WHEREAS the Corporation of the Town of Amherstburg and owners of said property have agreed to the terms and conditions of a Development Agreement in the form annexed hereto;

NOW THEREFORE the Corporation of the Town of Amherstburg enacts as follows:

1. THAT the Mayor and Clerk be hereby authorized to enter into a Development Agreement between Diageo Canada Inc. and the Corporation of the Town of Amherstburg for the re-development of 110 St. Arnaud for two building additions, said agreement affixed hereto;
2. THAT this By-law shall come into force and take effect immediately upon the final passing thereof at which time all by-laws that are inconsistent with the provisions of this by-law and the same are hereby amended insofar as it is necessary to give effect to the provisions of this by-law.

Read a first, second and third time and finally passed this 14th day of May, 2018.



MAYOR – ALDO DICARLO



CLERK – PAULA PARKER

DEVELOPMENT AGREEMENT

THIS AGREEMENT made in quadruplicate this 14th day of May, 2018.

BETWEEN:

DIAGEO CANADA INC.
(Hereinafter collectively called "**Owner**")

OF THE FIRST PART;

- and -

THE CORPORATION OF THE TOWN OF AMHERSTBURG
(Hereinafter called the "**Corporation**")

OF THE SECOND PART;

Hereinafter collectively referred to as the "**Parties**"

WHEREAS the lands affected by this Agreement are described in Schedule "A" attached hereto, and are hereinafter referred to as the "**Lands**";

AND WHEREAS Diageo Canada Inc. warrants it is the registered owner of the Lands outlined in Schedule "A";

AND WHEREAS, in this Agreement the "**Owner**" includes an individual, an association, a partnership or corporation and, wherever the singular is used therein, it shall be construed as including the plural;

AND WHEREAS the Official Plan in effect in Amherstburg designated parts of the area covered by the Official Plan, including the Lands, as a Site Plan Control area;

AND WHEREAS the Owner intends to develop the Lands for the purpose of two building additions, one loading dock joining warehouse 1 with 3 and one loading dock joining warehouse 2 with 4, each including a kitchenette and washroom facility in accordance with the Site Plan attached hereto as Schedule "B", and hereinafter referred to as the "Site Plan";

AND WHEREAS the Corporation as a condition of redevelopment of the Lands requires the Owner to enter into a Development Agreement;

WHEREAS the lands affected by this Agreement are described in Schedule "A" attached hereto, and are hereinafter referred to as the "said lands";

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, along with the sum of FIVE (\$5.00) DOLLARS of lawful money of Canada, now paid by each of the Parties hereto to each of the other parties hereto, the receipt and sufficiency of which are hereby acknowledged, the Owner hereby covenants and agrees with the Corporation as follows:

1. The following Schedules attached hereto, are hereby made a part of this Agreement as fully and to all intents and purposes as though recited in full herein:
2. Schedule "A" hereto describes the Lands.

3. Schedule "B" (the "Site Plan") hereto shows:
 - (a) The location of all existing buildings and structures;
 - (b) The location and provision of off-street vehicular parking facilities and access driveways including driveways for emergency vehicles;
 - (c) The location of existing service roads and parking areas.
4. Schedule "C" hereto shows:
 - (a) Site services
5. Schedule "D" hereto shows:
 - (a) Underground site services
6. Schedule "E" hereto shows:
 - (a) Preliminary layout of existing warehouses and building additions;
 - (b) Dock Plan;
 - (c) Elevations of loading dock additions.
7. Schedule "F" here to shows:
 - (a) Plan, profiles and details
8. The Owner shall be responsible for consulting with and obtaining any necessary approvals from Essex Power regarding any matters that relate to services for the Development Lands to be provided by Essex Power. In addition, the Owner shall be responsible for any costs associated with the reconstruction, relocation or changes to the hydro system resulting from this development.
9. The Owner shall be responsible for consulting with and obtaining any necessary approvals from Union Gas and Bell Canada regarding any matters that relate to services to be provided by Union Gas and Bell Canada. In addition, the Owner shall be responsible for any costs associated with the reconstruction, relocation or changes to these services resulting from this development.
10. The Owner shall be responsible for consulting with and obtaining any necessary approval or permits from the Ministry of the Environment and Climate Change, the County of Essex and/or the Essex Region Conservation Authority (E.R.C.A.).
11. If any curbs, sidewalks, boulevards or highway surfaces of the Corporation are damaged during the development by the Owner, such damage shall be repaired or replaced by the Owner.
12. Snow removal from the parking or loading areas and lanes, driveways and walkways shall be the responsibility of the Owner.
13. The Owner shall install and maintain a system for the disposal of storm and surface water as indicated on Schedule "D" so that no such water will flow along the surface from the said lands onto any adjoining lands.
14. Any garbage or refuse that is stored outside shall be stored in a non-combustible container and maintained so that the garbage or refuse does not blow or fall out of the container.
15. Any and all lighting shall be installed and maintained in accordance with the standards set out in the Town's Development Manual, and, so as to not, in the opinion of the Corporation, interfere with the use or enjoyment of adjacent properties or with the safe flow of traffic on abutting or adjacent streets.

16. The Town will monitor any increased noise resulting from the approval of the elevations and site plan as proposed by this development. The developer shall comply with all provisions of the Town's Noise By-law 2001-43, as amended from time to time. The Town reserves the right to engage the developer to make improvements and modifications to the satisfaction of the Town necessary to relieve noise emissions which are found to be in contravention of MOECC Noise Guidelines and/or the Town's Noise By-law, when measured from the subject lands to neighbouring sensitive land uses. The Town may impose reasonable timelines for the rectification of excessive noise emissions before the remedies contained elsewhere in this Agreement are sought. The Town will work with the developer in the spirit of cooperation to achieve a positive result.
17. The Owner agrees that any Municipal property, including without limiting the generality of the foregoing, curbs, gutters, pavements, sidewalks, or landscaped areas on the public highway and any property belonging to a third party, which are damaged during construction or otherwise, shall be restored to the satisfaction of the Town. The Owner shall keep the subject lands in a state of good repair (including the cutting of weeds) and upon written notice from the Town shall correct deficiencies in the state of repair within ten (10) days thereof.
18. The Owner agrees that the site will be inspected on an annual basis and any deficiencies will require immediate correction in accordance with the approved site plan.
19. All driveways for emergency vehicles shall:
 - (1) Be connected with a public thoroughfare;
 - (2) Be designed and constructed to support expected loads imposed by firefighting equipment;
 - (3) Be surfaced with concrete, asphalt or other material capable of permitting accessibility under all climatic conditions;
 - (4) Have a clear width of 3 metres at all times;
 - (5) Be located not less than 3 metres and not more than 15.2 metres measured horizontally and at right angles from the face of the building;
 - (6) Have an overhead clearance not less than 4.5 metres;
 - (7) Have a change in gradient of not more than 1 in 12.5 over a minimum distance of 15.2 metres; and
 - (8) Have approved signs displayed to indicate the emergency route.
20. If the Ontario Building Code requires that an architect or professional engineer or both shall be responsible for the field review of any new building or extension provided for in this Agreement, the Owner shall not occupy or use or permit to be occupied or used any said new building or extension until after an architect or professional engineer has given to the Corporation a letter addressed to the Corporation and signed by him certifying that all services on or in the said lands, required for this development or redevelopment, newly installed by the Owner in connection with this development or redevelopment and not contained within a building, have been installed and completed in a manner satisfactory to the architect or professional engineer.
21. The Corporation through its servants, officers and agents including its building inspector, plumbing inspector, fire chief, public works head and municipal engineer may from time to time and at any time enter on the Lands to inspect:
 - (1) The progress of development;
 - (2) The state of maintenance as provided for in this Agreement.
22. In the event of any servant, officer or agent of the Corporation determining upon inspection that the development is not proceeding in strict accord with the plans and specifications filed with the Corporation, such servant, officer or agent shall forthwith place a notice requiring all work to be stopped upon the Lands, and shall forward a copy by registered mail to the Owner at his last address as shown by the revised assessment rolls, and the Owner shall forthwith correct the

deficiency or deviation or appeal to Council of the Corporation as hereinafter provided.

23. In the event of any servant, officer or agent of the Corporation upon inspection being of the opinion that the state of maintenance is not satisfactory, such servant, officer or agent shall forthwith forward notice of such opinion to the Owner by registered mail at his last address as shown from the revised assessment rolls, and the Owner shall forthwith correct the deficiency or appeal to Council of the Corporation as hereinafter provided.
24. In the event that an Owner should disagree with the opinion of the servant, officer or agent of the Corporation as to the progress of the development or as to the state of maintenance, such Owner shall appear before Council of the Corporation, which after hearing the Owner, shall be permitted to express its position as to whether such progress or maintenance is satisfactory, following which Council of the Corporation shall make a decision, by resolution, as to whether to lift or sustain the prior decision of the Corporation's servant, officer or agent, which shall constitute a final determination of the matter.
25. In the event that an Owner should fail to obey a stop work order issued under Section 23 hereof, in addition to any other remedy, the Owner recognizes the right of the Corporation to apply to the Court for an Order granting injunctive relief, both interlocutory and permanent. The Owner acknowledges and admits that its failure to obey a stop work order constitutes irreparable harm to the Corporation and that the balance of convenience favours granting such injunctive relief without further proof thereof by the Corporation. The Owner shall be liable to the Corporation for all costs in relation to obtaining such an Order, including all legal costs. The costs shall be deemed to be municipal taxes and to be recoverable in accordance with Section 34 of this Agreement.
26. In the event that an Owner should fail to correct a deviation or deficiency after notice pursuant to Sections 23 or 24 or after notice of an opinion, which Council of the Corporation determines is correct under Section 25, the Council of the Corporation may by law direct or default of the matter or thing being done by the Owner, after two (2) weeks notice to it by registered mail at the last shown address of the Owner pursuant to the revised assessment rolls of passage of such by-law, that such matter or thing be done by the Corporation at the expense of the Owner, which expense may be recovered by action or like manner as municipal taxes and to be recoverable in accordance with Section 33 of this Agreement.
27. In the event of an Owner wishing to change at any time any of the buildings, structures or facilities described in the plans annexed or referred to in Section 3 hereof, it shall make application to Council of the Corporation for approval and shall not proceed with such change until approval is given by such Council, or in default by the Ontario Municipal Board, under the procedure set out in Section 41 of the Planning Act, R.S.O. 1990 herebefore referred to.
28. This Agreement and the provisions thereof do not give to the Owner or any person acquiring any interest in the said lands any rights against the Corporation with respect to the failure of the Owner to perform or fully perform any of its obligations under this Agreement or any negligence of the Owner in its performance of the said obligations or any act or omission of the Corporation under this Agreement.
29. In the event that no construction on the Lands has commenced on or before the expiry of one (1) year from the date of registration of this Agreement, the Corporation may subsequently, at its option, on one month's written notice to the Owner, terminate this Agreement, whereupon the Owner acknowledges that agrees that it will not be able to undertake any development construction on the Lands (or any further development or construction) on the Lands.

30. All facilities and matters required by this Agreement shall be provided and maintained by the Owner at its sole risk and expense to the satisfaction of the Corporation and in accordance with the standards determined by the Corporation and in default thereof and without limiting other remedies available to the Corporation, the provisions of Section 446 of the Municipal Act shall apply.
31. A financial guarantee (certified cheque or irrevocable letter of credit – self renewing without burden of proof) for FIFTY PERCENT (50%) of the value of on-site improvements of this development, exclusive of buildings and structures, is required to be paid and/or posted with the Corporation, in addition to further financial security in the amount of ONE HUNDRED PERCENT (100%) for all off-site works required as part of this development.

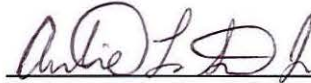
The Owner's engineer is required to provide a certified estimate of the cost of the on-site and off-site work for consideration by the Town's Director of Engineering and Infrastructure for his/her approval, with any decision by the Town's Director of Engineering and Infrastructure in this regard to be final and binding upon the Owner. Once the Town has inspected and approved the construction of the on-site and off-site works, the Owner will be required to provide security for a ONE (1) year maintenance period in the amount of FIFTEEN PERCENT (15%) of the cost of on-site and off-site improvements.

32. This Agreement shall be registered against the land to which it applies, at the expense of the Owner, and the Corporation shall be entitled, subject to the provisions of the Registry Act and the Land Titles Act, to enforce its provisions against the Owner named herein and any and all subsequent owners of the lands.
33. This Agreement shall ensure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
34. This Agreement shall be governed by, and interpreted according to, the laws of the Province of Ontario and the laws of Canada applicable therein, and shall be treated in all respects as an Ontario Contract.
35. If any provision or part thereof of this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement, and the remaining provisions of the Agreement shall remain in force and effect and shall be binding upon the Parties hereto as though the said provision or part thereof had never been including in this Agreement; provided that the severance of the provision or part does not fundamentally impair the rights of the Corporation in which case the Corporation may declare, without the consent of the Owner, this Agreement void, and all development and construction shall cease pending the execution of a new Agreement by the parties.
36. The division of this Agreement into Articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not effect the construction or interpretation hereof.
37. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and shall be effective as of the date set out above.
38. Words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and neutral genders.
39. Schedules and other documents attached or referred to in this Agreement are an integral part of this Agreement, and are hereby incorporated into this Agreement by reference.

40. This Agreement constitutes the entire agreement among the Parties and except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations and warranties of the respective Parties. There are no oral representations or warranties among the Parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both Parties.

IN WITNESS WHEREOF the Owner and the Corporation (the latter under the hands and seals of its officers duly authorized in this regard), have executed this Agreement as of the date first above written.

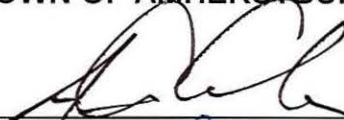
OWNER: DIAGEO CANADA INC.



Per Antoine Smith, Site Director

I have authority to bind the Corporation

**THE CORPORATION OF THE
TOWN OF AMHERSTBURG**



Per Aldo DiCarlo, Mayor



Per Paula Parker, Clerk

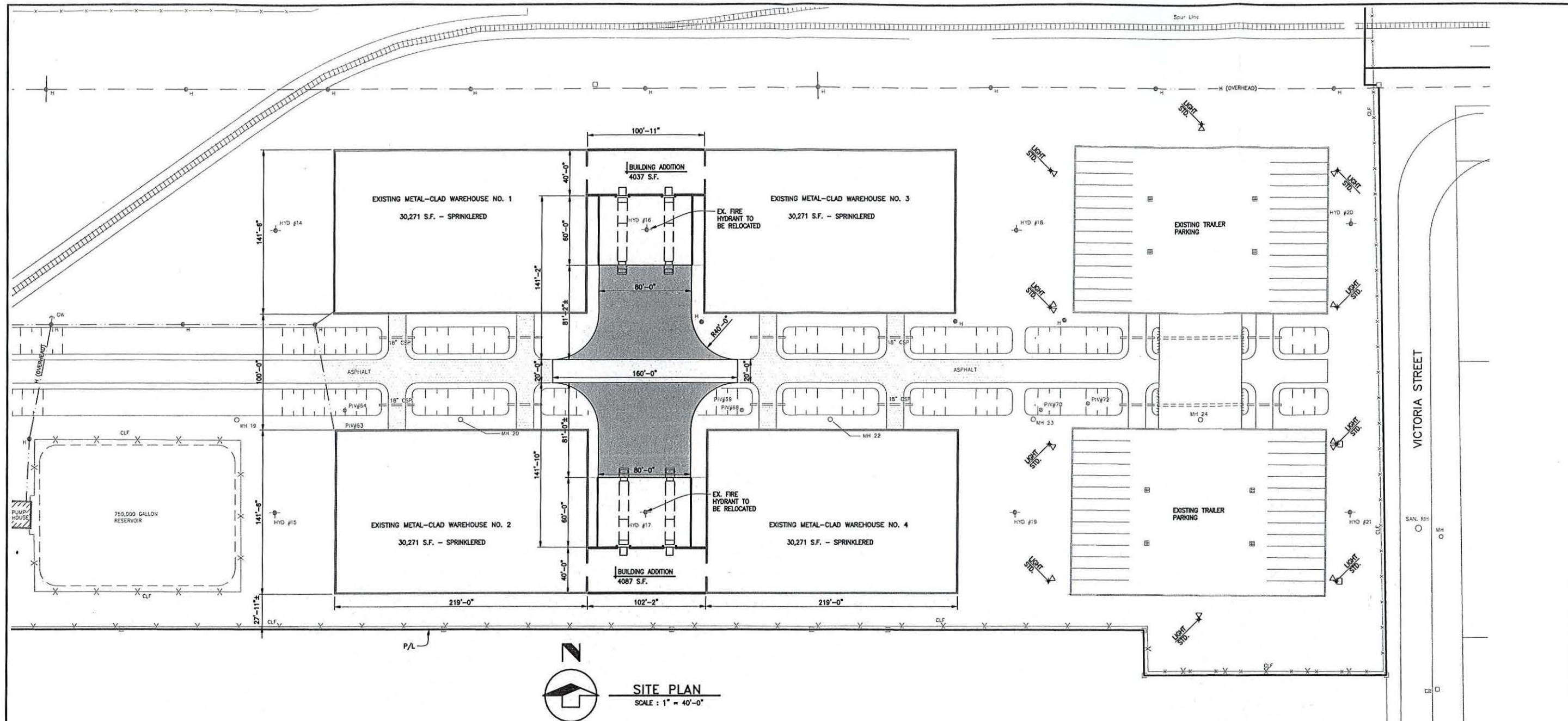
We have authority to bind the Corporation

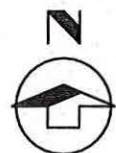
Authorized and approved by By-law No. 2018-53
enacted the 14th day of May, 2018.

SCHEDULE "A"

The following is a description of the land to which this instrument applies:

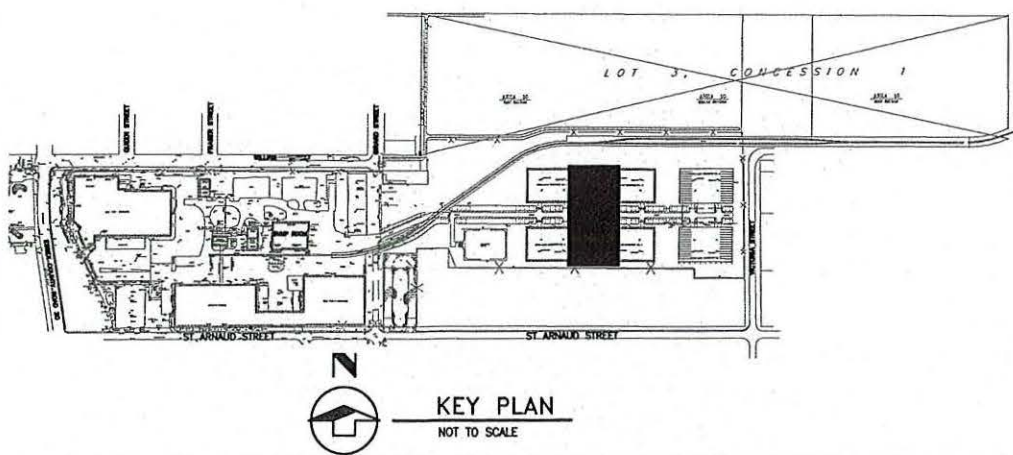
Plan 240, Lots 78 to 84 and Part Lots 68 to 77, 85 and 86,
RP 12R-18719, Parts 2 to 4 and Part of Balaclava Street and Part of William Street
in the Town of Amherstburg,
County of Essex,
Province of Ontario

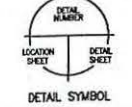



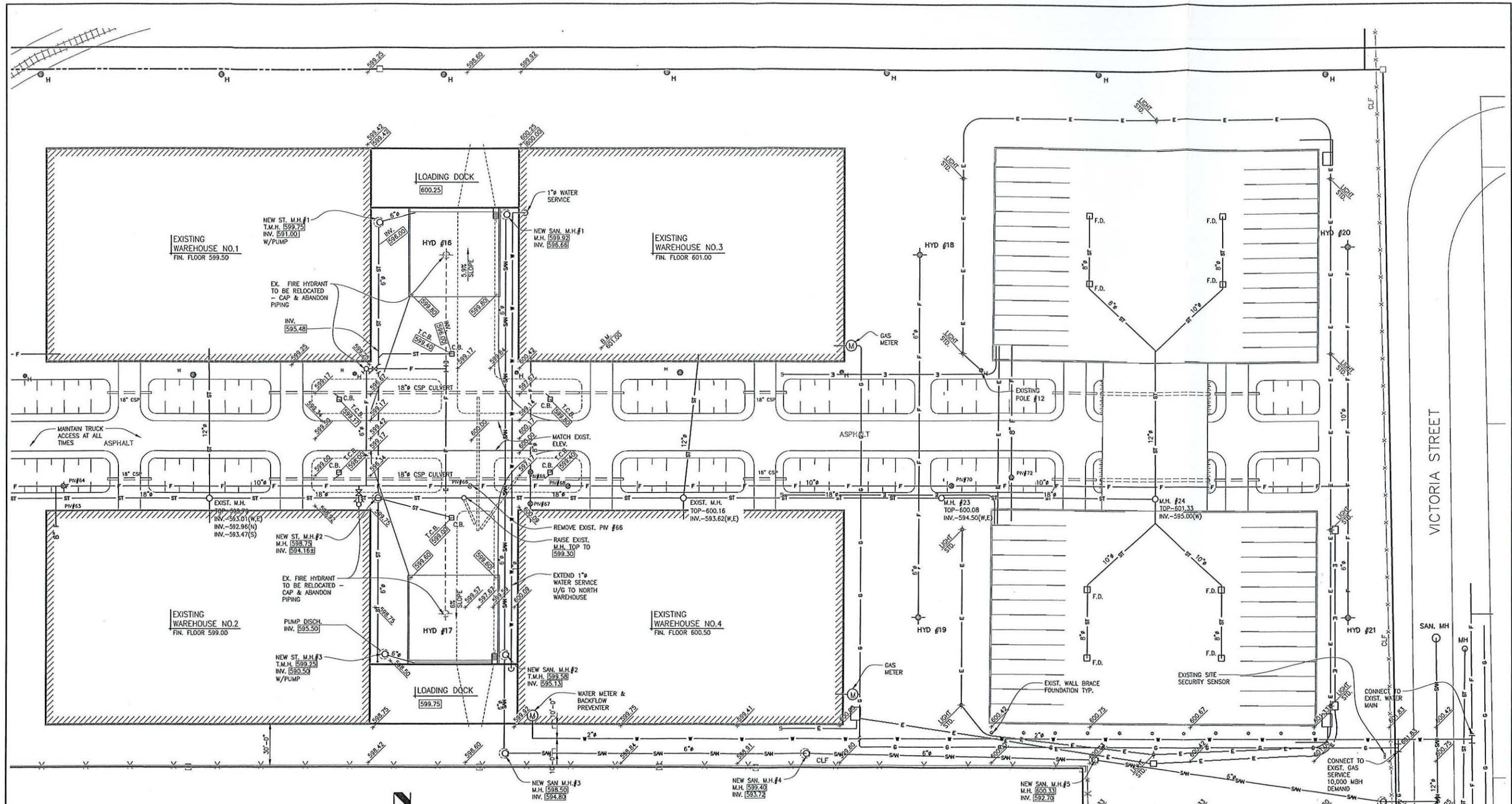


SITE PLAN
 SCALE: 1" = 40'-0"

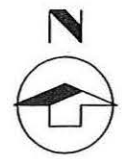
SCHEDULE "B" TO BY-LAW 2018-53
DIAGEO CANADA INC.
Antoine Smith
 Antoine Smith, Site Director
TOWN OF AMHERSTBURG
Aldo DiCarlo
 Aldo DiCarlo, Mayor
Paula Parker
 Paula Parker, Clerk



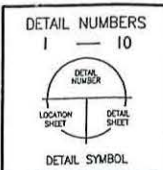
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| DETAIL NUMBERS 1 - 10  DETAIL SYMBOL | | | | | | | |
| | 18/04/11 | S.P.C. APPLICATION | | | | | |
| | DATE | ISSUED FOR | | | | | |
| | IN CHARGE T.A. | DESIGNED T.A. | DRAWN A.M. | CHECKED | DATE APRIL 2018 | APPROVED | |
| | CLIENT MATASSA INC. | PROJECT TITLE DIAGEO - AMHERSTBURG WAREHOUSE MODIFICATIONS | ENG. TITLE SITE PLAN | | | | |
| | | | | | | | PROJECT No. 18023 |
| | | | | | | | ENG. No. SPC-I |
| | | | | | | |  VALDEZ ENGINEERING LTD. consulting engineers windsor, ontario |



| LEGEND | | |
|-----------------|----------|-----|
| DESCRIPTION | EXISTING | NEW |
| PROPERTY LINE | --- | --- |
| STORM SEWER | ST | ST |
| SANITARY SEWER | SW | SW |
| WATERMAIN | W | W |
| GAS MAIN | G | G |
| FIRE LINE | F | F |
| ELECTRICAL LINE | E | E |
| FIRE HYDRANT | | |
| CATCH BASIN | | |
| MANHOLE | | |
| ELEVATION | | |



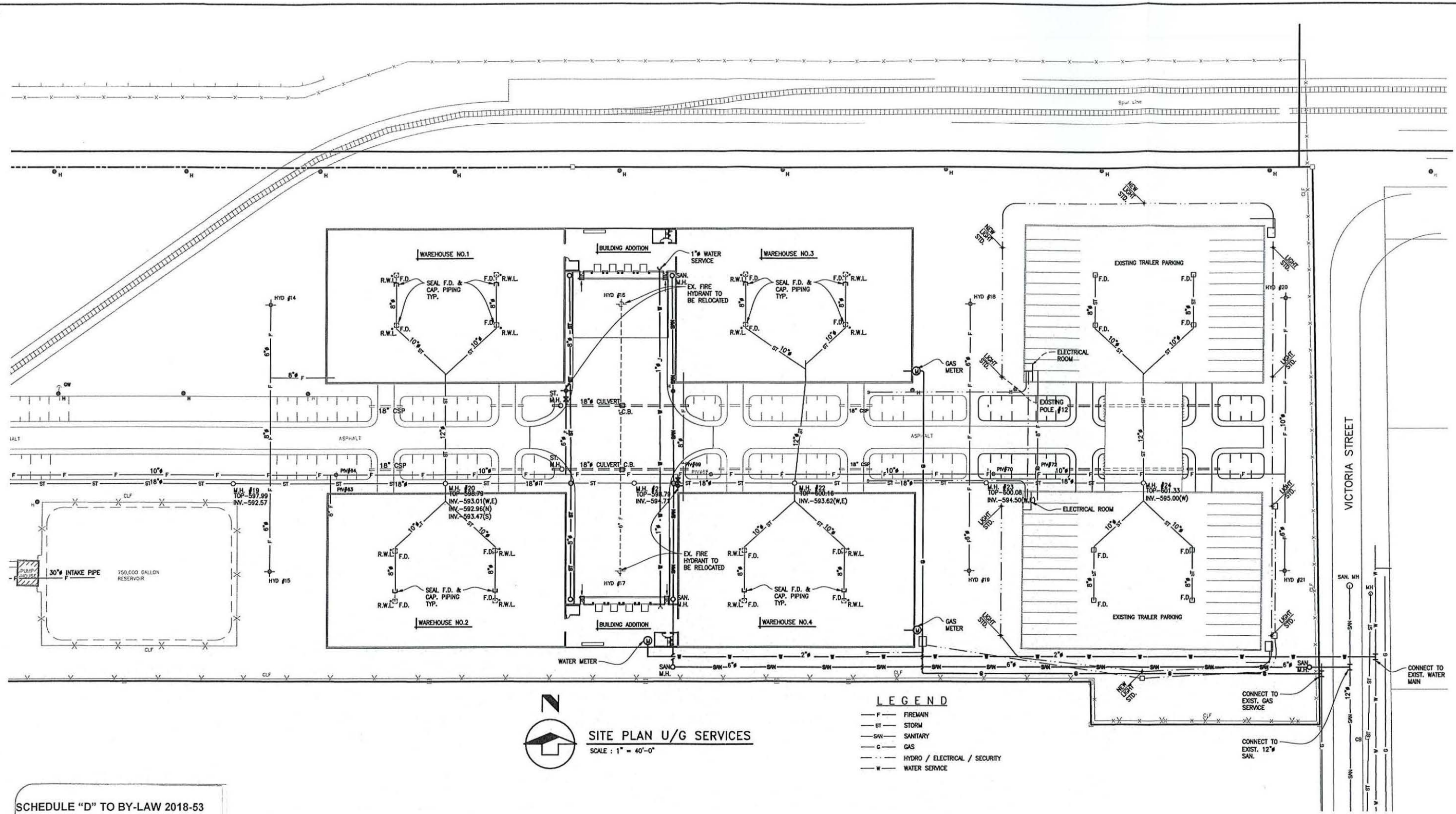
SITE PLAN
SCALE: 1" = 30'-0"



SCHEDULE "C" TO BY-LAW 2018-53

DIAGEO CANADA INC.
Antoine Smith
 Antoine Smith, Site Director
TOWN OF AMHERSTBURG
Aldo DiCarlo Mayor
Paula Parker Clerk

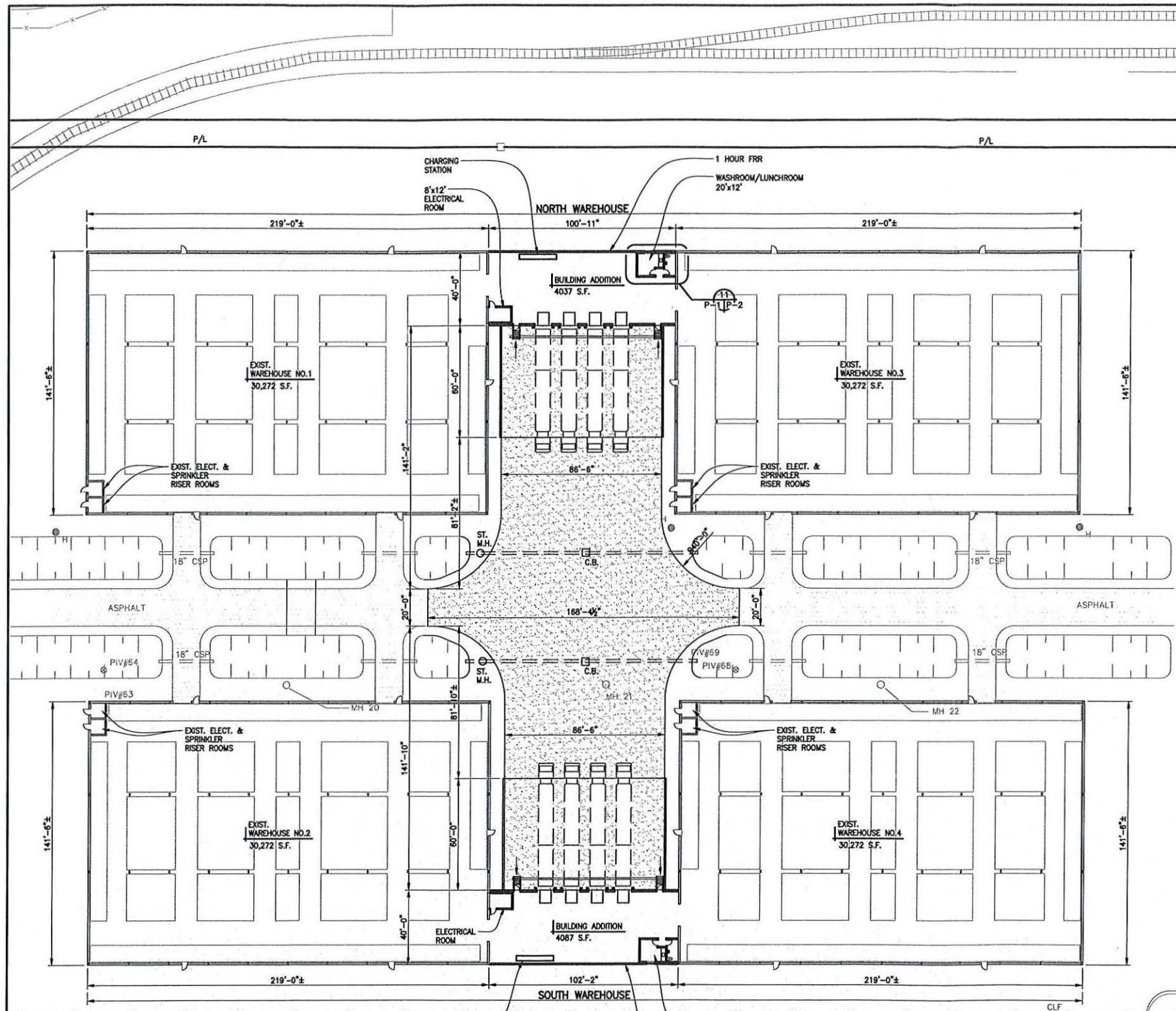
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|-------------------|---------------------------------------------------------------|----------------------------------------------------------------------------|
| IN CHARGE T.A. | CLIENT MATASSA INC. | PROJECT NO. 18023 |
| DESIGNED T.A. | PROJECT TITLE DIAGEO - AMHERSTBURG WAREHOUSE MODIFICATIONS | ENR. NO. SP-1 |
| DRAWN A.M. | ENR. TITLE SITE PLAN | |
| CHECKED | | |
| DATE | | |
| APPROVED | | VALDEZ ENGINEERING LTD. consulting engineers windsor, ontario |



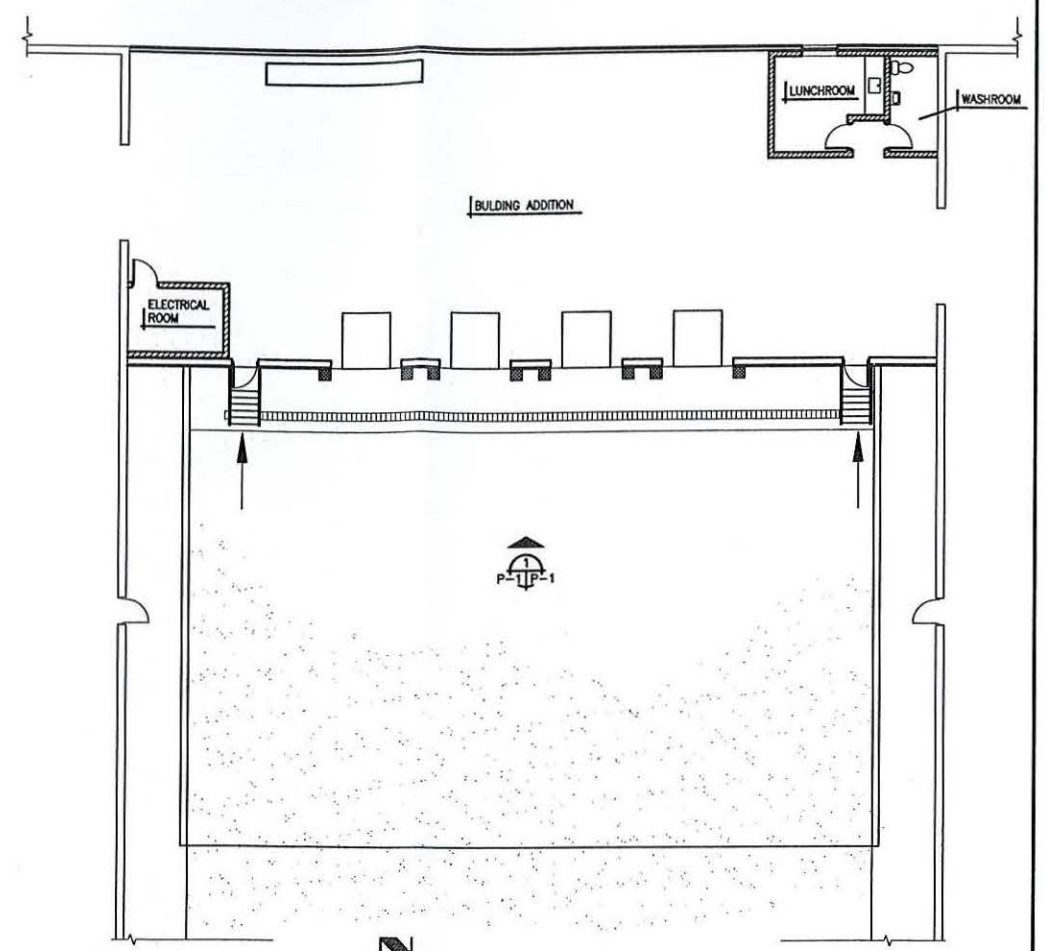
SITE PLAN U/G SERVICES
 SCALE : 1" = 40'-0"

SCHEDULE "D" TO BY-LAW 2018-53
 DIAGEO CANADA INC.
Antoine Smith
 Antoine Smith, Site Director
 TOWN OF AMHERSTBURG
Aldo DiCarlo Mayor
Paula Parker Clerk

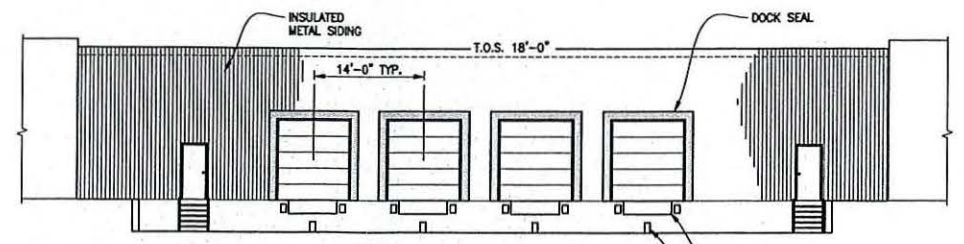
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| | DATE 18/04/11 | S.P.C. APPLICATION | R-1 | DESIGNED T.A. | PROJECT TITLE DIAGEO - AMHERSTBURG WAREHOUSE MODIFICATIONS U/G SITE SERVICES | Dwg. No. SPC-2 |
| APPROVED | DATE | ISSUED FOR | R-1 | DRAWN A.M. | VALDEZ ENGINEERING LTD. consulting engineers windsor, ontario | |



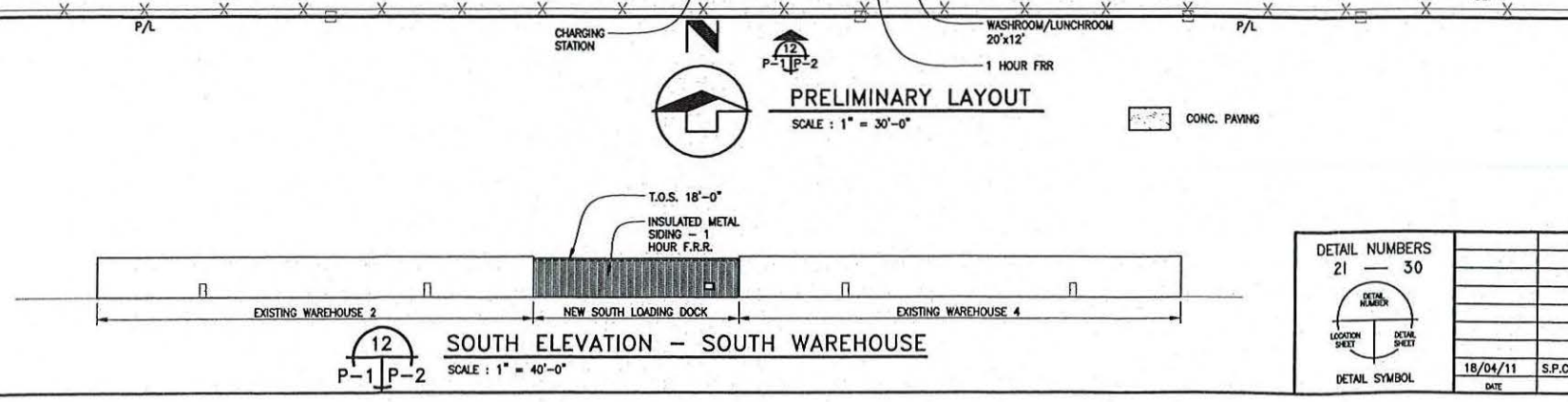
PRELIMINARY LAYOUT
SCALE : 1" = 30'-0"



DOCK BLOW-UP PLAN
SCALE : 3/32" = 1'-0"



DOCK ELEVATION
SCALE : 3/32" = 1'-0"



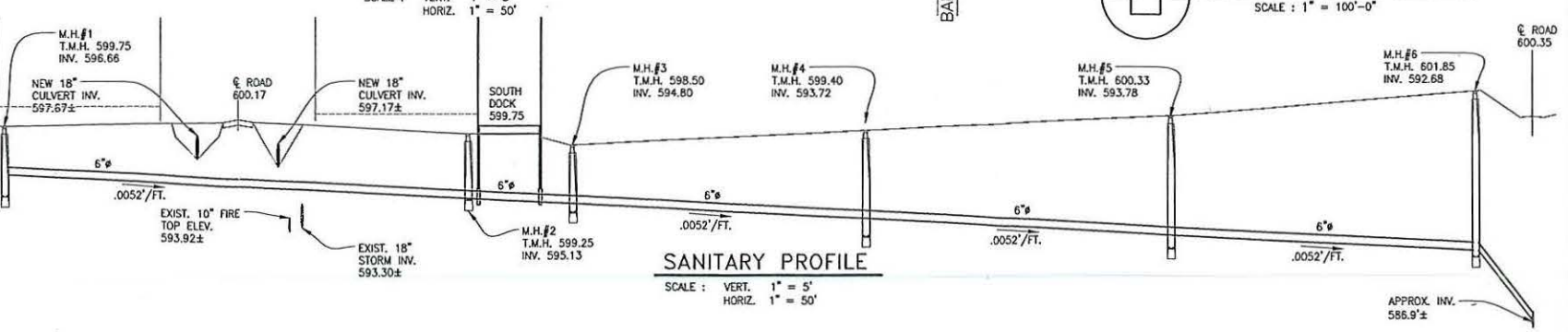
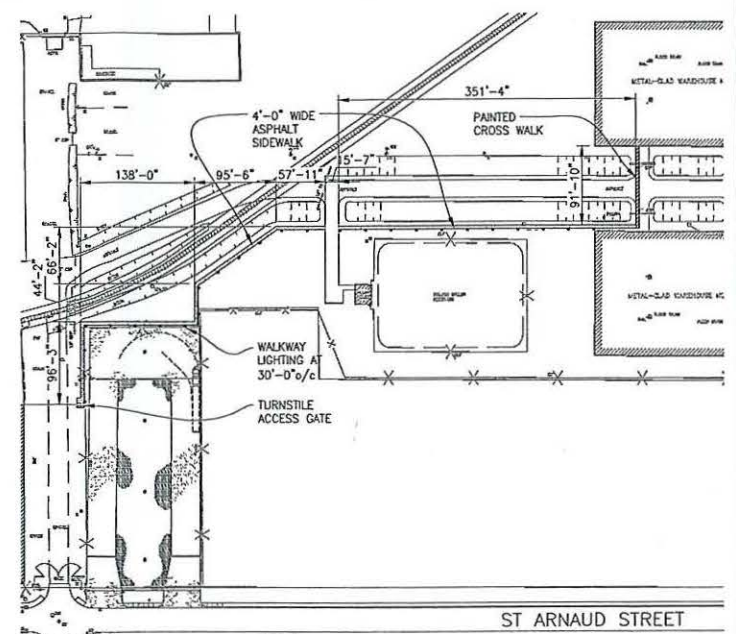
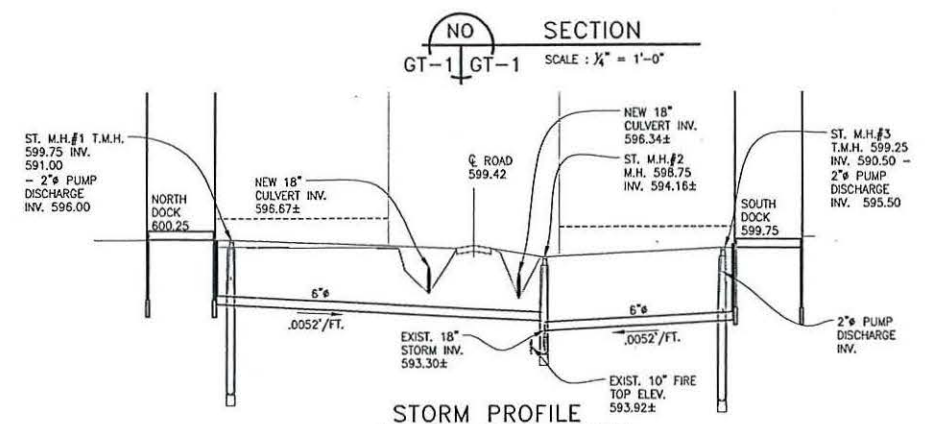
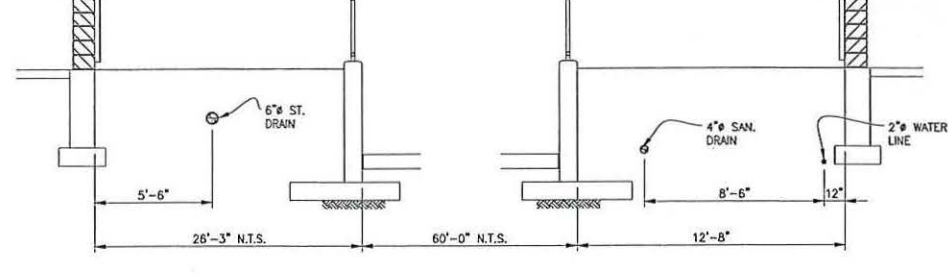
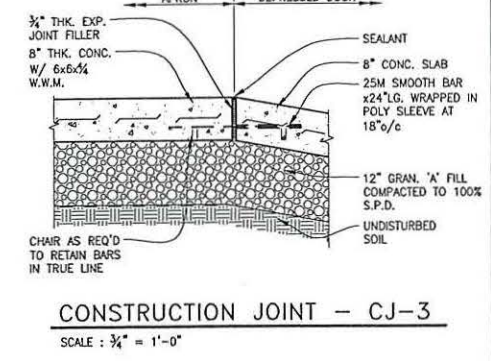
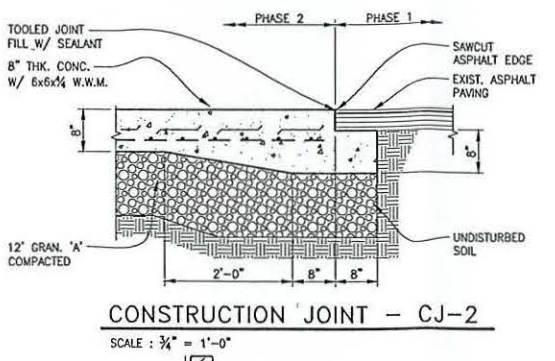
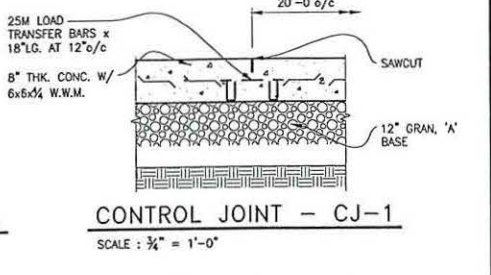
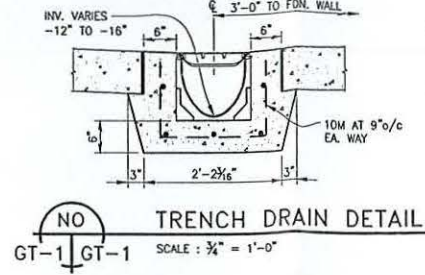
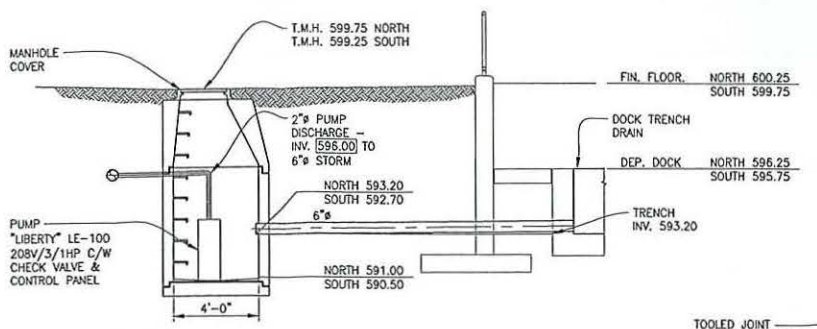
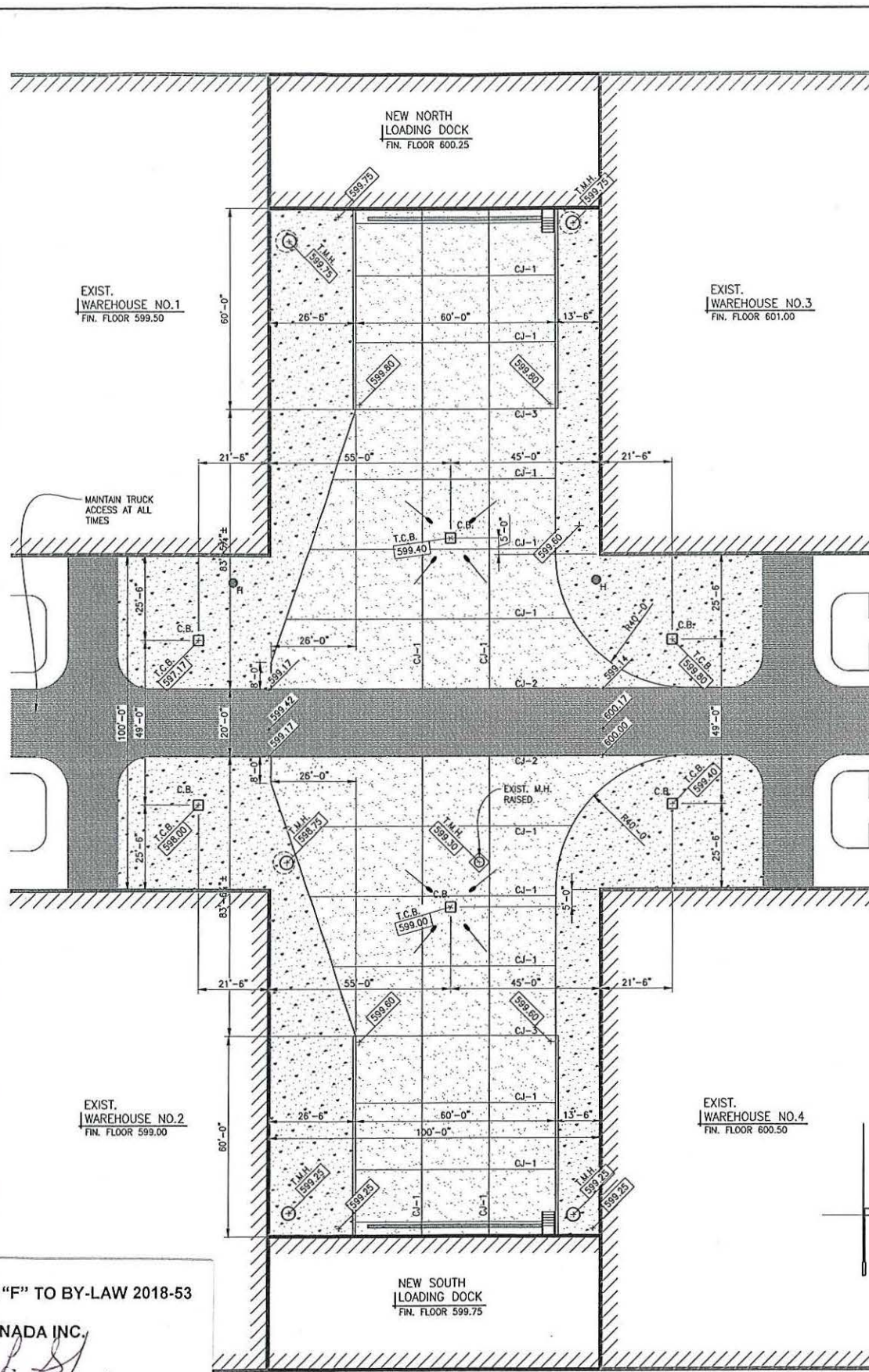
SOUTH ELEVATION - SOUTH WAREHOUSE
SCALE : 1" = 40'-0"

SCHEDULE "E" TO BY-LAW 2018-53

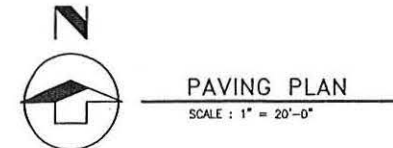
DIAGEO CANADA INC.
Antoine Smith
Antoine Smith, Site Director
TOWN OF AMHERSTBURG
Aldo DiCarlo Mayor
Paula Parker Clerk

| | |
|----------------|--------------------|
| DETAIL NUMBERS | 21 - 30 |
| DATE | 18/04/11 |
| ISSUED FOR | S.P.C. APPLICATION |

| | | | |
|----------------------------------------------------------------------------|----------------------------------------------|-------------|-------|
| CLIENT | MATASSA INC. | PROJECT No. | 18023 |
| PROJECT TITLE | DIAGEO - AMHERSTBURG WAREHOUSE MODIFICATIONS | DWG. No. | SPC-3 |
| DWG. TITLE | PRELIMINARY LAYOUT, PLAN & ELEVATION | | |
| VALDEZ ENGINEERING LTD. consulting engineers windsor, ontario | | | |



SCHEDULE "F" TO BY-LAW 2018-53
 DIAGEO CANADA INC.
 Antoine Smith, Site Director
 TOWN OF AMHERSTBURG
 Aldo DiCarlo, Mayor
 Paula Parker, Clerk



LEGEND

| | |
|----------|-----------------------|
| [Symbol] | GRANULAR SURFACE |
| [Symbol] | CONCRETE PAVING |
| [Symbol] | EXIST. ASPHALT PAVING |

DETAIL NUMBERS
II - 20

| LOCATION SHEET | DETAIL SHEET | DATE | ISSUED FOR |
|----------------|--------------|------|------------|
| | | | |

| | |
|-----------|------|
| IN CHARGE | T.A. |
| DESIGNED | T.A. |
| DRAWN | A.M. |
| CHECKED | |
| DATE | |
| APPROVED | |

| | | | |
|----------------------------------------------------------------------------|----------------------------------------------|-------------|-------|
| CLIENT | MATASSA INC. | PROJECT NO. | 18023 |
| PROJECT TITLE | DIAGEO - AMHERSTBURG WAREHOUSE MODIFICATIONS | DWG. NO. | SP-2 |
| VALDEZ ENGINEERING LTD. consulting engineers windsor, ontario | | | |